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In re Application of :
LAHAV et al. :
Application No.: 10/018,992 : DECISION ON
PCT No.: PCT/IL00/00364 : PAPERS UNDER 37 CFR 1.42
Int. Filing Date: 21 June 2000 :
Priority Date: 22 June 1999 :
Attorney Docket No.: DO1/2000 :
For: STABLE BENZIMIDAZOLE
FORMULATION

This is a response to the "Renewed Submission under 37 CFR 1.42" filed 18 October 2002. No petition fee is required.

BACKGROUND

On 21 June 2000, applicants filed international application PCT/IL00/00364, which claimed a priority date of 22 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 December 2000. A proper Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire on 26 December 2001.

On 26 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, *inter alia*, by: the basic national fee and a copy of the international application.

On 27 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497 and the surcharge fee required under 37 CFR 1.492(e). The notification set a two-month time period to respond.

On 27 June 2002, applicants filed a declaration and power of attorney executed by Valerie Azoulay as inventor and Erica Lahav on behalf of deceased inventor, Raffael Lahav. In a decision dated 30 August 2002, applicants' request was dismissed because the declaration was defective under 37 CFR 497(b).

On 18 October 2002, applicants filed the present renewed request accompanied by a declaration/power of attorney executed by Erica Lahav as the "executrix" of the deceased inventor, Raffael Lahav.

DISCUSSION

Pursuant to 37 CFR 1.42, first sentence:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

The declaration filed 18 October 2002 is executed by Erica Lahav as the "executrix" of the deceased inventor, Raffael Lahav. However, a review of the declaration filed on 18 October 2002 reveals that the declaration executed by Erica Lahav is not in compliance with 37 CFR 1.497(a)(3). 37 CFR 1.497(a)(3) requires that the declaration must "identify each inventor and the residence and country of citizenship of each inventor." In this instance, the declaration executed by Erica Lahav does not identify the second inventor, Valerie Azoulay. Therefore, a new declaration executed by Erica Lahav, with the second inventor listed thereon, must be filed in order to fulfill the declaration requirement under 35 U.S.C. 371.

CONCLUSION

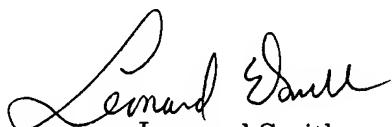
For the above reasons, the request for status under 37 CFR 1.42 is REFUSED.

Applicant is required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTH** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by the "executrix" of the deceased inventor.

Any further correspondence with respect to this matter should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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